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Office-Supreme Court, U.S.
FILED
FEB 4 1985
ALEXANDER L. STEVAS,
CLERK

NO. 84-877

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

WILLIAM HILDMANN,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Whether the Appellate Court of Illinois properly determined that the police made an investigatory stop of petitioner that was valid under Illinois statutory and case law authority and was in accordance with the factors outlined by this Court in Terry v. Ohio, where in this case a previously reliable informant gave the police detailed, first-hand information concerning petitioner's illegal activities which was independently corroborated by the police.

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COURT OF ILLINOIS, FIRST DISTRICT

OPINION BELOW

The order of the Appellate Court of Illinois, First District, reversing and remanding the trial court's decision, was issued as an unpublished order pursuant to Illinois Supreme Court Rule 23; Ill. Rev.

Stat. 1983, ch. 110A, Rule 23. The text of the order disposing of the appeal is set out in full in the Petition for Writ of Certiorari, Appendix 2.

JURISDICTION

The jurisdictional requisites have been set forth in the Petition for Writ of Certiorari. However, as treated more fully within the following argument, the respondent believes that the petition has failed to show any good reason for this Court to exercise jurisdiction to review the judgment in question by writ of certiorari.

STATEMENT OF THE CASE

On November 30, 1981, the petitioner, William Hildmann, was arrested and charged in the Circuit Court of Cook County, Illinois with possession of a controlled

substance and unlawful use of weapons. (R. C7) Prior to trial petitioner filed a Motion to Quash Arrest and Suppress Evidence. (R. C11-C13) After a hearing, the trial court granted petitioner's motion. (R. 50) The People appealed from the trial court's order quashing the arrest and suppressing evidence. The Illinois Appellate Court reversed the trial court's ruling in an order pursuant to Illinois Supreme Court Rule 23. (Appendix 2) Petitioner's leave to appeal to the Supreme Court of Illinois was denied. (Appendix 1)

At the hearing on the motion to suppress, petitioner testified that at approximately 8:00 p.m. on November 30, 1981, he was driving a van when a police officer approached him with a drawn gun and motioned for him to get out of that vehicle. (R. 2-4) Petitioner claimed that the

officers failed to show him a search or arrest warrant. (R. 4) Petitioner was then taken to a nearby police station. (R. 5)

Petitioner stated that the police officers would not allow him to make a phone call until he signed a certain document. (R. 6) He claimed that the officers mistreated him because he refused to sign. (R. 7-10) Petitioner testified that he signed a blank form at approximately midnight. (R. 11) Although petitioner maintained that the form was blank, he testified that he knew the document authorized the officers to search his apartment. (R. 6, 12) Petitioner denied that he told the police he had an apartment at 7240 Park Avenue in Summit, Illinois; but he admitted that he had been present at that address sometime in the

past. (R. 20, 33)

At the conclusion of defendant's testimony, the prosecution made a motion for a directed finding on petitioner's motion to suppress the evidence obtained in the apartment. (R. 21-22) The trial court granted that motion, but denied the prosecutor's motion for a directed finding as to the original arrest. (R.22-23)

Chicago police officer Barrett Moran testifed that at about 7:45 p.m. on November 30, 1981, an informant told him that a black-over-gray van would be parked at the intersection of Sheridan Road and Buena Avenue in Chicago at approximately 8:00 p.m. that same evening. (R. 24-25) Moran was told that the driver of the van would be a white male who had cocaine in his possession. The driver would be present at the specific place and time for the

purpose of selling the cocaine to another person. The informant based his knowledge on a telephone conversation that he had just had with the driver of the van. (R. 25)

Officer Moran had received information from that particular informant on five or six previous occasions. (R. 25) As a direct result of that information fugitives had been arrested, in addition to four other arrests made regarding illegal drugs. (R. 26-27)

Because the informant indicated that the sale was to occur in 15 minutes, the police officers then left the station immediately and arrived at the intersection minutes later. (R. 27) Officer Moran stated that 15 minutes was not enough time to get an arrest warrant and arrive at the intersection at the designated time. (R. 28)

Officer Moran identified petitioner as the driver of the van. (R. 28) As petitioner exited the van, the officers observed a .25 caliber automative pistol lying in full view on the floor of the van. The police officers then seized the pistol and placed petitioner under arrest. Two women who were also in the van were taken into custody, but were later released. (R. 29)

After defendant's arrest, Officer Moran entered the van while it was still at the intersection and searched the area of the driver's seat where petitioner had been sitting. Directly above the driver's seat was a hole cut into a false ceiling. Officer Moran reached up into the hole and recovered two packets of white powder in clear plastic bags. (R. 29) The white powder was subsequently determined to be

cocaine. Another small packet of cocaine was found under the back seat of the squad car where defendant and the two women were sitting while being transported to the police station. (R. 30)

At the station, defendant was advised of his Miranda rights. (R. 31) Defendant admitted that he lived at 7240 Park Avenue in Summit, Illinois. (R. 33) Just before 10:00 p.m. Officer Moran presented petitioner with a consent to search document. (R. 33-34) Petitioner was allowed to read the document for 7 or 8 minutes before he signed it. (R. 34) The document was completely filled in prior to defendant's signing except for the time when defendant signed it. The document was signed and witnessed at 10:00 p.m.

The police searched the premises at 7240 Park Avenue and seized the following:

six clear plastic bags, each containing white powder; three bottles containing over 60 different colored pills; one clear plastic bag containing crushed green leaves; a scale; a strainer; a grinder; a hypodermic needle; several small screens; and razor blades. (R. C9)

After hearing the evidence and the arguments of counsel, the trial court granted petitioner's motion to quash the arrest and suppress the evidence. (R. 50) The trial court stated it based its ruling on the fact that Officer Moran did not establish the basis of the informant's knowledge and that the Aguilar-Spinelli tests were not met.

THE PEOPLE'S APPEAL

Pursuant to an appeal by the respondent from the trial court's ruling, the

Appellate Court reversed the trial court and ruled that the police corroboration of a reliable informant's tip led to a proper investigatory stop. Observance of petitioner's gun in plain view provided probable cause to arrest him for unlawful possession of a weapon, which then justified the subsequent search of the van.

Following the reversal by the Appellate Court of the trial court's ruling on his motion, the petitioner sought leave to appeal to the Supreme Court of Illinois. On October 2, 1984, the Supreme Court of Illinois denied his petition for leave to appeal.

REASON FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

THE ILLINOIS APPELLATE COURT PROPERLY REVERSED THE TRIAL COURT'S GRANTING OF PETITIONER'S MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE WHERE A RELIABLE INFORMER PROVIDED POLICE WITH DETAILED INFORMATION, WHICH WAS INDEPENDENTLY CORROBORATED AND LED TO A PROPER INVESTIGATORY STOP OF PETITIONER.

The petitioner contends that the Appellate Court erred in reversing the trial court's decision to quash petitioner's arrest and suppress the resulting evidence. He argues that the police informant's tip was unreliable, uncorroborated, and failed to justify the investigatory stop of petitioner.

The respondent maintains that the Appellate Court's reversal was proper under both state and federal law because the informant's tip was both reliable and independently corroborated and supported the investigatory stop of petitioner. Illinois statutory and case law independently supports the Appellate Court's conclusion that the investigatory stop of petitioner was lawful. Furthermore, the investigatory stop of petitioner was lawful under this Court's decision in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

On the night in question, the informant told police that at approximately 8:00 p.m. on that same evening, a black-over-gray van would be present at the intersection of Sheridan Road and Buena Avenue and that the driver of that van would be a

white man. The informant, who had just spoken to the driver, also told police that the driver would have cocaine and would be present for the purpose of selling cocaine to another person.

The police had used this informant five or six times before. In the past the informant had given police accurate information that had resulted in several drug arrests.

The police arrived at the intersection of Sheridan and Buena 10 minutes later. A few minutes after that at 8:00 p.m., they observed a black-over-gray van with a white male driver parked in the intersection. Therefore, the police were able to verify the information given to them by the informant through first-hand observation.

Petitioner contends that the appellate court erred in finding the police had re-

liable information to make a proper investigatory stop of petitioner under Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

In Terry this Court ruled that an officer may approach a person for purposes of investigating possible criminal behavior, even though there is no probable cause to arrest. A "stop" by police officers must be justified by "specific and articulable facts, which, taken together with rational inferences from those facts reasonable warrant that intrusion." Id. at 21.

The Appellate Court of Illinois also set out an adequate independent state basis for upholding the lawfulness of the police conduct. In Illinois an investigatory stop may be made of a motorist if the officer has reasonable suspicion of the

commission of a crime. People v. Zielinski, 91 Ill. App.3d 519, 521, 414 N.E.2d 1113 (1st Dist. 1980).

One source for the Zelinski decision is Ill. Rev. Stat. 1983, ch. 38, sec. 107-14, which provides:

> Temporary Questioning Without Arrest.
>
> A peace officer, after having identified himself as a peace officer, may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense as defined in Section 102-15 of this Code, and may demand the name and address of the person and an explanation of his actions. Such detention and temporary questioning will be conducted in the vicinity of

where the person was stopped.

Ill. Rev. Stat. 1983, ch. 38, sec. 102-15 defines "offense" as a violation of any penal statute of the State of Illinois.

The Appellate Court clearly based its decision on both Illinois and federal law. In Michigan v. Long, ___ U.S. ___, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201 (1983) this Court announced the following principle:

> If the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate and independent grounds, we, of course, will not undertake to review the decision.

In view of the Illinois case law and statutes, it is clear that the appellate court properly applied the above standards

to the instant case; therefore this Court has no jurisdiction. The police officers received reliable information from a reliable source and made a proper stop of petitioner after verifying the facts for themselves. This Court condoned such police work in Adams v. Williams, 407 U.S. 193, 935 S.Ct. 1921, 32 L.Ed.2d 612 (1972):

> A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information may be most reasonable in light of facts known to the officer at the time. [Id. at 147.]

The petitioner's contention that the Illinois Appellate Court misapplied the totality of circumstances test, outlined in Illinois v. Gates, in determining the veracity of the informant's tip has no basis in

law or fact. In Illinois v. Gates, ___ U.S. ___, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983) this Court ruled that a "totality of circumstances standard permits the relative weights of all the various indicia of reliability attending an informant's tip." Thus, the Gates decision retired the rigid two-pronged test set forth in Aguilar v. Texas, 378 U.S. 108, 82 S.Ct. 1509, 12 L.Ed.2d 723 (1964) and Spinelli v. United States, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969). Gates supra, at 2331.

Specifically, an application of the totality of circumstances standard requires a balanced assessment of the following factors: the informant's previous reliability of predictions of certain types of crimes; the details of the described wrongdoing; first-hand knowledge of the informant; and the corroboration of the in-

formant's tip by independent police work. Gates, supra, at 2330, 2334.

In the instant case the informant had provided police with information concerning illegal narcotics, which resulted in several arrests. The informant told police that a white male driving a black-over-gray van would park at a specific location at the specific time. Just prior to calling the police, the informant had spoken to the driver on the phone. Ten minutes later, the police arrived to obeserve the facts exactly as the informant had told them, except they saw no buying or selling of drugs. The fact that certain details of the informant's information proved true lends credence to those details which were not confirmed. Draper v. United States, 358 U.S. 307, 313, 79 S.Ct. 329, 3 L.Ed.2d 327 (1959).

Clearly, the investigatory stop of petitioner was proper because the information received from the informer was both reliable and independently corroborated. Thus, the Illinois Appellate Court's reversal of the trial court's granting of petitioner's motion to quash the arrest and suppress the evidence was based on well-settled state and federal law. And since the Illinois law adequately and independently supports the Appellate Court's decision, this Court has no jurisdiction.

Thus, the petitioner has failed to show any need for this Court, in its sound discretion, to grant his petition. There are no exceptional circumstances of any kind which would warrant this Court to review the finding of the Illinois Appellate Court.

CONCLUSION

The People of the State of Illinois respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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